

AMENDED IN SENATE APRIL 8, 2010

SENATE BILL

No. 1275

Introduced by Senators Leno and Steinberg

February 19, 2010

An act to amend Section 2923.5 of, and to add and repeal Sections 2923.4, 2923.7, 2923.73, and 2923.75 of, the Civil Code, relating to mortgages.

LEGISLATIVE COUNSEL'S DIGEST

SB 1275, as amended, Leno. Mortgages: foreclosures.

Existing law requires that, upon a breach of the obligation of a mortgage or transfer of an interest in property, the trustee, mortgagee, or beneficiary record a notice of default in the office of the county recorder where the mortgaged or trust property is situated and mail the notice of default to the mortgagor or trustor. Existing law provides that, after not less than 3 months after the filing of the notice of default, the parties described above may give notice of sale, stating the time and place of the sale, as specified.

Existing law ~~requires~~, until January 1, 2013, *and as applied to mortgages and deeds of trust recorded between January 1, 2003, and December 31, 2007, that are secured by owner-occupied residential real property containing no more than 4 dwelling units, requires* a mortgagee, trustee, beneficiary, or authorized agent to contact the borrower, as defined, prior to filing a notice of default, in order to assess the borrower's financial situation and explore options for the borrower to avoid foreclosure. Existing law requires the notice of default to include a specified declaration from the mortgagee, beneficiary, or authorized agent regarding its contact with the borrower.

This bill would, until January 1, 2013, *extend those requirements to apply to mortgages or deeds of trust recorded prior to January 1, 2009, that are secured by owner-occupied residential real property containing no more than 4 dwelling units. The bill would require a mortgagee, trustee, beneficiary, or authorized agent, within a specified time period prior to the filing of a notice of default, to provide the borrower with an application for a loan modification and other foreclosure avoidance options written information regarding loan modifications and a specified notice regarding the borrower's rights during the foreclosure process, subject to specified exceptions. The bill would require an unspecified state entity to make that notice available in English and specified languages. The bill would further revise the borrower contact requirements described above by requiring a mortgagee, beneficiary, or authorized agent to make reasonable borrower solicitation efforts, as specified, to explore options for the borrower to avoid foreclosure. The bill would prohibit a mortgagee, beneficiary, or authorized agent from filing a notice of default until these solicitation efforts have failed or the borrower has been evaluated and determined to be ineligible for a loan modification. The bill would establish time periods in which the mortgagee, beneficiary, or authorized agent is required to review and respond to a borrower's request for a loan modification, subject to certain exceptions.*

~~This bill would prohibit the mortgagee, beneficiary, or authorized agent from combining collections activity with communication with the borrower about foreclosure avoidance options. The bill would delete the requirement that the notice of default contain a specified declaration, and would instead require the, until January 1, 2013, that a mortgagee, beneficiary, or authorized agent to, concurrently with the filing of a notice of default, record a declaration of compliance that attests to specified facts, and mail the borrower a notice stating that these requirements have been met the borrower solicitation requirements have been met. The bill would provide that failure to record a declaration of compliance, or recordation of a declaration of compliance that fails to meet the specified requirements, failure to materially comply with these provisions, would constitute grounds for the borrower to bring an action to void the foreclosure, or to recover either treble damages or statutory specified damages in the amount of \$10,000, whichever is greater, from the mortgagee, trustee, beneficiary, or authorized agent, if specified conditions exist.~~

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 2923.4 is added to the Civil Code, to read:
2 2923.4. (a) (1) After a loan becomes 31 days delinquent, but
3 not later than 10 days after the loan becomes 60 days delinquent,
4 a mortgagee, trustee, beneficiary, or authorized agent shall provide
5 the borrower with a copy of the notice described in subdivision
6 (b) together with written communication that describes options
7 that may be available to borrowers who are unable to afford their
8 mortgage payments and who wish to avoid foreclosure and that
9 clearly describes the process, if any is available to the borrower,
10 for applying for a loan modification.
11 (2) The written communication shall include all of the following:
12 (A) (i) If the mortgagee, trustee, beneficiary, or authorized
13 agent is participating in the federal Making Home Affordable
14 Modification Program (HAMP) or is otherwise required to review
15 the borrower's loan under HAMP guidelines, then the written
16 communication shall clearly describe HAMP and list the documents
17 and other information the borrower is required to submit in order
18 to have the mortgagee, trustee, beneficiary, or authorized agent
19 complete a loan modification analysis.
20 (ii) If the mortgagee, trustee, beneficiary, or authorized agent
21 is not participating in HAMP and is not otherwise required to
22 review the borrower's loan under HAMP guidelines, then the
23 written communication shall clearly describe the loan modification
24 program or programs available to the borrower, if any, and list
25 the documents and other information the borrower is required to
26 submit in order to have the mortgagee, trustee, beneficiary, or
27 authorized agent complete a loan modification analysis. If no
28 programs are available to the borrower, the written communication
29 shall state that fact.
30 (B) A toll-free telephone number that will provide access to a
31 live representative during business hours for borrowers who wish
32 to discuss options for avoiding foreclosure with their mortgagee,
33 beneficiary, or authorized agent.

1 (C) The Internet Web site address, if any, of the mortgagee,
2 beneficiary, or authorized agent, where a borrower may obtain
3 the following information:

4 (i) Options that may be available to borrowers who are unable
5 to afford their mortgage payments and who wish to avoid
6 foreclosure, and instructions to borrowers advising them of steps
7 to take to explore those options.

8 (ii) A list of information and documents borrowers should
9 collect and be prepared to present to the mortgagee, beneficiary,
10 or authorized agent when discussing options for avoiding
11 foreclosure.

12 (iii) A toll-free telephone number for borrowers who wish to
13 discuss options for avoiding foreclosure with their mortgagee,
14 beneficiary, or authorized agent.

15 (iv) The toll-free telephone number made available by the United
16 States Department of Housing and Urban Development (HUD) to
17 find a HUD certified housing counseling agency.

18 (b) A state government entity shall create the following notice
19 in at least 12-point type and make it available in English and the
20 languages set forth in subdivision (b) of Section 1632:

21
22 “Important Notice Regarding Your Rights and Foreclosure
23 Avoidance Options: California law requires that you receive this
24 notice of your legal rights before the foreclosure process begins.

25 ARE YOU HAVING TROUBLE PAYING YOUR MORTGAGE?

26 If you are having trouble paying your mortgage, you should
27 contact your loan servicer as soon as possible to discuss options
28 for avoiding foreclosure. Your loan servicer is the company listed
29 on your mortgage bills as the party to which your mortgage
30 payment should be sent.

31 You may also call [1-800-xxx-xxxx] to find a housing counseling
32 agency certified by the United States Department of Housing and
33 Urban Development (HUD) that offers free services in your area.

34 POTENTIAL FORECLOSURE AVOIDANCE OPTIONS

35 One potential option for avoiding foreclosure is a loan
36 modification. Your loan servicer may be participating in the federal
37 loan modification program called the Home Affordable
38 Modification Program (HAMP), which has specific requirements
39 and guidelines. To see if your servicer is participating, or to find

1 *out more about this program, visit*
2 *http://www.makinghomeaffordable.gov/contact_servicer.html.*

3 *Your servicer may offer other loan modification programs*
4 *instead of or in addition to HAMP. You may also qualify for other*
5 *options for avoiding foreclosure, including loan refinancing, a*
6 *temporary forbearance, short sale, or a deed in lieu of foreclosure.*

7 *With this notice, you should have received a letter from your*
8 *servicer that describes options that may be available to borrowers*
9 *who are unable to afford their mortgage payments and who wish*
10 *to avoid foreclosure. That letter describes any loan modification*
11 *programs available to you and the steps you must take to apply*
12 *for a loan modification.*

13 *If you are interested in applying for a loan modification, you*
14 *must submit the required documentation to your mortgage servicer*
15 *as soon as possible. Be sure to read and carefully review any*
16 *communication from your mortgage servicer, and submit all of*
17 *the forms, documents, and information required by the deadlines*
18 *indicated in the servicer's communications. If you submit all of*
19 *the forms, documents, and information required for a loan*
20 *modification evaluation by the specified deadlines, your servicer*
21 *must review your application and inform you of its decision before*
22 *initiating the foreclosure process by filing a document called a*
23 *Notice of Default. If your servicer denies your request for a loan*
24 *modification, it must send you a detailed letter that explains the*
25 *reason(s) for the denial and provides you with information about*
26 *how to dispute the denial.*

27 **THE FORECLOSURE PROCESS**

28 *If your servicer denies your application and complies with the*
29 *contact and notice requirements described in Sections 2923.5 and*
30 *2923.73 of the Civil Code, it may proceed with the foreclosure*
31 *process.*

32 *Notice of Default: Your loan servicer may not foreclose on your*
33 *home without filing official documents with the county recorder.*
34 *You are entitled to receive copies of those documents. The first*
35 *step in the foreclosure process is the filing of a notice of default.*
36 *If your loan servicer records a notice of default on your loan, it*
37 *must mail you a copy of that notice by certified mail and must wait*
38 *at least 90 days before taking further steps to sell your home.*

39 *Notice of Sale: Once 90 days have passed from the filing of the*
40 *notice of default, your servicer may file a notice of sale. If your*

1 servicer has not received an exemption from the California
2 Foreclosure Prevention Act (CFPA), it must wait an additional
3 90 days (for a total of 180 days) after filing the notice of default
4 before filing a notice of sale. A list of servicers with exemptions
5 under the CFPA is available at
6 <http://www.corp.ca.gov/FSD/CFP/pdf/ExemptList.pdf>,
7 <http://www.dfi.ca.gov/cfpa/default.asp>, and
8 http://www.dre.ca.gov/ind_cfpa_exemplist.asp. Your servicer must
9 post the notice of sale on your property, mail you a copy of the
10 notice by certified mail, and wait at least 20 days before selling
11 your home. Your notice of sale will include the contact information
12 of the person or company to call if you want more information
13 about your sale date. You should make note of that contact
14 information and be sure to check for any changes to the sale date.
15 Please seek legal help if you believe that you have been denied
16 your legal foreclosure rights. It is illegal for any person, including
17 a lawyer, to charge you for helping you with a loan modification
18 or other effort to avoid foreclosure before providing the services
19 promised.”

20
21 (c) The English and translated forms of this notice shall be made
22 available on or before January 1, 2011.

23 (d) This section shall not apply if any of the following occurs:

24 (1) The borrower has surrendered the property as evidenced
25 by either a letter confirming the surrender or delivery of the keys
26 to the property to the mortgagee, trustee, beneficiary, or authorized
27 agent.

28 (2) The borrower has contracted with an organization, person,
29 or entity whose primary business is advising people who have
30 decided to leave their homes about how to extend the foreclosure
31 process and avoid their contractual obligations to mortgagees or
32 beneficiaries.

33 (3) A case has been filed by the borrower under Chapter 7, 11,
34 12, or 13 of Title 11 of the United States Code, and the bankruptcy
35 court has not entered an order closing or dismissing the bankruptcy
36 case or granting relief from a stay of foreclosure. This shall not
37 preclude a mortgagee, trustee, beneficiary, or authorized agent
38 from soliciting or considering a borrower who is in bankruptcy
39 for a loan modification, whether under the requirements of HAMP,
40 or under its own proprietary loan modification program.

1 (e) *This section shall apply only to mortgages or deeds of trust*
2 *recorded prior to January 1, 2009, and that are secured by*
3 *owner-occupied residential real property containing no more than*
4 *four dwelling units. For purposes of this subdivision,*
5 *“owner-occupied” means that the residence is the principal*
6 *residence of the borrower as indicated to the lender in loan*
7 *documents.*

8 (f) *This section shall remain in effect only until January 1, 2013,*
9 *and as of that date is repealed, unless a later enacted statute, that*
10 *is enacted before January 1, 2013, deletes or extends that date.*

11 SEC. 2. *Section 2923.5 of the Civil Code is amended to read:*

12 2923.5. (a) ~~(1)–A mortgagee, trustee, beneficiary, or authorized~~
13 ~~agent may not file a notice of default pursuant to Section 2924~~
14 ~~until 30 days after initial contact is made as required by paragraph~~
15 ~~(2) or 30 days after satisfying the due diligence requirements as~~
16 ~~described in subdivision (g) the requirements of this section and~~
17 ~~Sections 2923.4, 2923.7, and 2923.73 have been satisfied.~~

18 ~~(2)–A mortgagee, beneficiary, or authorized agent shall contact~~
19 ~~the borrower in person or by telephone in order to assess the~~
20 ~~borrower’s financial situation and explore options for the borrower~~
21 ~~to avoid foreclosure. During the initial contact, the mortgagee,~~
22 ~~beneficiary, or authorized agent shall advise the borrower that he~~
23 ~~or she has the right to request a subsequent meeting and, if~~
24 ~~requested, the mortgagee, beneficiary, or authorized agent shall~~
25 ~~schedule the meeting to occur within 14 days. The assessment of~~
26 ~~the borrower’s financial situation and discussion of options may~~
27 ~~occur during the first contact, or at the subsequent meeting~~
28 ~~scheduled for that purpose. In either case, the borrower shall be~~
29 ~~provided the toll-free telephone number made available by the~~
30 ~~United States Department of Housing and Urban Development~~
31 ~~(HUD) to find a HUD-certified housing counseling agency. Any~~
32 ~~meeting may occur telephonically.~~

33 ~~(b)–A notice of default filed pursuant to Section 2924 shall~~
34 ~~include a declaration that the mortgagee, beneficiary, or authorized~~
35 ~~agent has contacted the borrower, has tried with due diligence to~~
36 ~~contact the borrower as required by this section, or that no contact~~
37 ~~was required pursuant to subdivision (h).~~

38 ~~(b) For all first lien mortgage loans described in subdivision~~
39 ~~(i) and not excluded by subdivision (h), a notice of default may not~~
40 ~~be filed until reasonable borrower solicitation efforts have failed~~

1 or a borrower who applies for a loan modification has been
2 evaluated and determined to be ineligible for a loan modification.
3 If a mortgagee, trustee, beneficiary, or authorized agent is subject
4 to paragraph (2) and reasonable solicitation efforts have failed,
5 the mortgagee, trustee, beneficiary, or authorized agent shall not
6 file a notice of default until at least 30 days after complying with
7 the reasonable solicitation efforts.

8 (1) If the mortgagee, trustee, beneficiary, or authorized agent
9 is participating in the Making Home Affordable Modification
10 Program (HAMP) or is otherwise required to review the
11 borrower's loan under HAMP guidelines, compliance with all
12 borrower outreach and loan application review procedures and
13 timelines set forth in the applicable HAMP guidelines shall
14 constitute reasonable borrower solicitation efforts. The notice and
15 written communication required by Section 2923.4 may be used
16 to satisfy one of the applicable written borrower outreach
17 requirements of this paragraph.

18 (2) If the mortgagee, trustee, beneficiary, or authorized agent
19 is not participating in HAMP and is not otherwise required to
20 review the borrower's loan under HAMP guidelines, compliance
21 with all of the following shall constitute reasonable borrower
22 solicitation efforts:

23 (A) A mortgagee, beneficiary, or authorized agent shall contact
24 the borrower in person or by telephone in order to assess the
25 borrower's financial situation and explore options for the borrower
26 to avoid foreclosure. This in-person or telephone communication
27 shall be clearly identified as an attempt to initiate discussion with
28 the borrower about foreclosure avoidance options, and may not
29 include a demand for immediate payment of any past-due amounts
30 owed by the borrower. During the initial telephone contact, the
31 mortgagee, beneficiary, or authorized agent shall advise the
32 borrower that he or she has the right to request a subsequent
33 meeting and, if requested, the mortgagee, beneficiary, or authorized
34 agent shall schedule the meeting to occur within 14 days. The
35 assessment of the borrower's financial situation and discussion
36 of options may occur during the first contact, or at the subsequent
37 meeting scheduled for that purpose. In either case, the borrower
38 shall be provided the toll-free telephone number made available
39 by the United States Department of Housing and Urban

1 *Development (HUD) to find a HUD-certified housing counseling*
2 *agency. Any meeting may occur telephonically.*

3 *(B) A mortgagee, beneficiary, or authorized agent shall send*
4 *the written communication and notice described in Section 2923.4*
5 *to the borrower.*

6 *(C) (i) After the written communication and notice described*
7 *in Section 2923.4 have been sent, the mortgagee, beneficiary, or*
8 *authorized agent shall attempt to contact the borrower in person*
9 *or by telephone in order to assess the borrower's financial situation*
10 *and explore options for the borrower to avoid foreclosure.*

11 *(ii) In order to make this contact, a mortgagee, beneficiary, or*
12 *authorized agent shall attempt to contact a borrower by telephone*
13 *at least three times at different hours and on different days.*
14 *Telephone calls shall be made to the last known telephone numbers*
15 *of record. These communications and attempted communications*
16 *shall be clearly identified as attempts to initiate discussion with*
17 *the borrower about foreclosure avoidance options, and may not*
18 *include a demand for immediate payment of any past-due amounts*
19 *owed by the borrower.*

20 *(iii) A mortgagee, beneficiary, or authorized agent may attempt*
21 *to contact a borrower using an automated system to dial*
22 *borrowers, provided that, if the telephone call is answered, the*
23 *call is connected to a live representative of the mortgagee,*
24 *beneficiary, or authorized agent.*

25 *(iv) A mortgagee, beneficiary, or authorized agent satisfies the*
26 *telephone contact requirements of this paragraph if it determines,*
27 *after attempting contact pursuant to this paragraph, that the*
28 *borrower's telephone numbers on file, if any, have been*
29 *disconnected.*

30 *(D) If the borrower does not respond within two weeks after the*
31 *telephone call requirements of clause (ii) have been satisfied, the*
32 *mortgagee, beneficiary, or authorized agent shall then send a*
33 *certified letter, with return receipt requested.*

34 *(E) The mortgagee, beneficiary, or authorized agent shall*
35 *provide a means for the borrower to contact it in a timely manner,*
36 *including a toll-free telephone number that will provide access to*
37 *a live representative during business hours.*

38 *(F) The mortgagee, beneficiary, or authorized agent shall post*
39 *a prominent link on the homepage of its Internet Web site, if any,*
40 *to the following information:*

1 (i) Options that may be available to borrowers who are unable
2 to afford their mortgage payments and who wish to avoid
3 foreclosure, and instructions to borrowers advising them on steps
4 to take to explore those options.

5 (ii) A list of financial documents borrowers should collect and
6 be prepared to present to the mortgagee, beneficiary, or authorized
7 agent when discussing options for avoiding foreclosure.

8 (iii) A toll-free telephone number for borrowers who wish to
9 discuss options for avoiding foreclosure with their mortgagee,
10 beneficiary, or authorized agent.

11 (iv) The toll-free telephone number made available by HUD to
12 find a HUD-certified housing counseling agency.

13 (c) A mortgagee, beneficiary, or authorized agent, concurrently
14 with the filing of a notice of default, shall do both of the following:

15 (1) Record a declaration of compliance pursuant to Section
16 2923.7. The declaration may be included as part of or attached to
17 the notice of default.

18 (2) Mail the borrower a notice stating that the requirements of
19 subdivision (b) have been met. That notice shall be sent by certified
20 mail and shall include the dates and times of, and addresses and
21 telephone numbers used for, the contact or attempted contact
22 required by subdivision (b).

23 ~~(e)~~
24 (d) If a mortgagee, trustee, beneficiary, or authorized agent had
25 already filed the notice of default prior to the enactment of this
26 section and did not subsequently file a notice of rescission, then
27 the mortgagee, trustee, beneficiary, or authorized agent shall, as
28 part of the notice of sale filed pursuant to Section 2924f, include
29 a declaration that either:

30 ~~(1) States that the borrower was contacted to assess the~~
31 ~~borrower's financial situation and to explore options for the~~
32 ~~borrower to avoid foreclosure.~~

33 ~~(2) Lists the efforts made, if any, to contact the borrower in the~~
34 ~~event no contact was made: the mortgagee, trustee, beneficiary,~~
35 ~~or authorized agent satisfied the requirements of Section 2923.73~~
36 ~~at least 45 days before filing the notice of sale.~~

37 ~~(d)~~
38 (e) A mortgagee's, beneficiary's, or authorized agent's loss
39 mitigation personnel may participate by telephone during any
40 contact required by this section.

1 (e)

2 (f) For purposes of this section, a “borrower” shall include a
3 mortgagor or trustor.

4 (f)

5 (g) A borrower may designate, with consent given in writing,
6 a HUD-certified housing counseling agency, attorney, or other
7 advisor to discuss with the mortgagee, beneficiary, or authorized
8 agent, on the borrower’s behalf, the borrowers financial situation
9 and options for the borrower to avoid foreclosure. That contact
10 made at the direction of the borrower shall satisfy the contact
11 requirements of ~~paragraph (2) of subdivision (a)~~ *subdivision (b)*.
12 Any loan modification or workout plan offered at the meeting by
13 the mortgagee, beneficiary, or authorized agent is subject to
14 approval by the borrower.

15 ~~(g) A notice of default may be filed pursuant to Section 2924~~
16 ~~when a mortgagee, beneficiary, or authorized agent has not~~
17 ~~contacted a borrower as required by paragraph (2) of subdivision~~
18 ~~(a) provided that the failure to contact the borrower occurred~~
19 ~~despite the due diligence of the mortgagee, beneficiary, or~~
20 ~~authorized agent. For purposes of this section, “due diligence”~~
21 ~~shall require and mean all of the following:~~

22 (1) ~~A mortgagee, beneficiary, or authorized agent shall first~~
23 ~~attempt to contact a borrower by sending a first-class letter that~~
24 ~~includes the toll-free telephone number made available by HUD~~
25 ~~to find a HUD-certified housing counseling agency.~~

26 (2) ~~(A) After the letter has been sent, the mortgagee,~~
27 ~~beneficiary, or authorized agent shall attempt to contact the~~
28 ~~borrower by telephone at least three times at different hours and~~
29 ~~on different days. Telephone calls shall be made to the primary~~
30 ~~telephone number on file.~~

31 ~~(B) A mortgagee, beneficiary, or authorized agent may attempt~~
32 ~~to contact a borrower using an automated system to dial borrowers,~~
33 ~~provided that, if the telephone call is answered, the call is~~
34 ~~connected to a live representative of the mortgagee, beneficiary,~~
35 ~~or authorized agent.~~

36 ~~(C) A mortgagee, beneficiary, or authorized agent satisfies the~~
37 ~~telephone contact requirements of this paragraph if it determines,~~
38 ~~after attempting contact pursuant to this paragraph, that the~~
39 ~~borrower’s primary telephone number and secondary telephone~~
40 ~~number or numbers on file, if any, have been disconnected.~~

1 ~~(3) If the borrower does not respond within two weeks after the~~
2 ~~telephone call requirements of paragraph (2) have been satisfied;~~
3 ~~the mortgagee, beneficiary, or authorized agent shall then send a~~
4 ~~certified letter, with return receipt requested.~~

5 ~~(4) The mortgagee, beneficiary, or authorized agent shall provide~~
6 ~~a means for the borrower to contact it in a timely manner, including~~
7 ~~a toll-free telephone number that will provide access to a live~~
8 ~~representative during business hours.~~

9 ~~(5) The mortgagee, beneficiary, or authorized agent has posted~~
10 ~~a prominent link on the homepage of its Internet Web site, if any,~~
11 ~~to the following information:~~

12 ~~(A) Options that may be available to borrowers who are unable~~
13 ~~to afford their mortgage payments and who wish to avoid~~
14 ~~foreclosure, and instructions to borrowers advising them on steps~~
15 ~~to take to explore those options.~~

16 ~~(B) A list of financial documents borrowers should collect and~~
17 ~~be prepared to present to the mortgagee, beneficiary, or authorized~~
18 ~~agent when discussing options for avoiding foreclosure.~~

19 ~~(C) A toll-free telephone number for borrowers who wish to~~
20 ~~discuss options for avoiding foreclosure with their mortgagee,~~
21 ~~beneficiary, or authorized agent.~~

22 ~~(D) The toll-free telephone number made available by HUD to~~
23 ~~find a HUD-certified housing counseling agency.~~

24 ~~(h) Subdivisions (a), (e), and (g) and (b) shall not apply if any~~
25 ~~of the following occurs:~~

26 ~~(1) The borrower has surrendered the property as evidenced by~~
27 ~~either a letter confirming the surrender or delivery of the keys to~~
28 ~~the property to the mortgagee, trustee, beneficiary, or authorized~~
29 ~~agent.~~

30 ~~(2) The borrower has contracted with an organization, person,~~
31 ~~or entity whose primary business is advising people who have~~
32 ~~decided to leave their homes on how to extend the foreclosure~~
33 ~~process and avoid their contractual obligations to mortgagees or~~
34 ~~beneficiaries.~~

35 ~~(3) A case has been filed by the borrower under Chapter 7, 11,~~
36 ~~12, or 13 of Title 11 of the United States Code and the bankruptcy~~
37 ~~court has not entered an order closing or dismissing the bankruptcy~~
38 ~~case, or granting relief from a stay of foreclosure. *This shall not*~~
39 ~~*preclude a mortgagee, trustee, beneficiary, or authorized agent*~~
40 ~~*from soliciting or considering a borrower who is in bankruptcy*~~

1 *for a loan modification, whether under the requirements of HAMP,*
2 *or under its own proprietary loan modification program.*

3 (i) This section shall apply only to mortgages or deeds of trust
4 ~~recorded from January 1, 2003, to December 31, 2007, inclusive~~
5 *prior to January 1, 2009*, that are secured by owner-occupied
6 residential real property containing no more than four dwelling
7 units. For purposes of this subdivision, “owner-occupied” means
8 that the residence is the principal residence of the borrower as
9 indicated to the lender in loan documents.

10 (j) This section shall remain in effect only until January 1, 2013,
11 and as of that date is repealed, unless a later enacted statute, that
12 is enacted before January 1, 2013, deletes or extends that date.

13 *SEC. 3. Section 2923.7 is added to the Civil Code, to read:*

14 *2923.7. (a) (1) In order to initiate the foreclosure process, a*
15 *mortgage servicer must transmit to the foreclosure trustee a*
16 *declaration of compliance that is signed on behalf of the mortgage*
17 *servicer by an individual having personal knowledge of the facts*
18 *stated within. The declaration of compliance shall be included as*
19 *part of, or attached to every notice of default filed pursuant to*
20 *Section 2924. A notice of default that does not include a declaration*
21 *of compliance shall not be valid.*

22 *(2) The declaration of compliance shall be substantially similar*
23 *to the following form:*

24
25 *DECLARATION OF COMPLIANCE*

26 *BORROWER CONTACT*

27 ☐ *This loan is not subject to Cal. Civil Code Sec. 2923.5,*
28 *pursuant to the following provisions (check all that apply):*

29
30 ☐ *Cal. Civil Code Sec. 2923.5(h).*

31
32 ☐ *Cal. Civil Code Sec. 2923.5(i).*

33
34 ☐ *This loan is subject to Cal. Civil Code Sec. 2923.5, and the*
35 *mortgagee, beneficiary, or authorized agent has complied with*
36 *the requirements of Cal. Civil Code Sec. 2923.5 by doing the*
37 *following (check all that apply):*

☐ Satisfying the applicable reasonable borrower solicitation efforts described in Cal. Civil Code Sec. 2923.5(b). If checked, insert the date that the reasonable borrower solicitation efforts were completed here: _____

☐ Sending the letter required by Cal. Civil Code Sec. 2923.5(c).

☐ Sending the notice and written communication described in Cal. Civil Code Sec. 2923.6 during the time period set forth in that section.

FORECLOSURE AVOIDANCE REVIEW

☐ This loan is not subject to Cal. Civil Code Sec. 2923.73, pursuant to the following provisions (check all that apply):

☐ Cal. Civil Code Sec. 2923.73(d).

☐ Cal. Civil Code Sec. 2923.73(e).

☐ This loan is subject to Cal. Civil Code Sec. 2923.73 and (check only one):

☐ The borrower was evaluated for a loan modification and was determined to be ineligible for any loan modification program, and the mortgagee, beneficiary, or authorized agent sent the borrower a denial explanation letter in compliance with the requirements of Cal. Civil Code Sec. 2923.73(a).

☐ The borrower did not submit all required written application materials and documentation by the applicable deadline.

☐ The borrower did not respond to the reasonable solicitation efforts of the mortgagee, beneficiary, or authorized agent by the applicable deadline.

☐ The borrower was offered a trial period loan modification plan, but the borrower did not accept the trial period loan modification plan or failed to comply with the terms of the plan.

☐ The borrower was offered a permanent loan modification, but the borrower did not accept the modification offered or did not comply with the terms of the modification.

1 *□ The borrower has communicated to the mortgagee, beneficiary, or authorized*
2 *agent that he or she is not interested in pursuing a loan modification.*

3
4 *(b) This section shall remain in effect only until January 1, 2013,*
5 *and as of that date is repealed, unless a later enacted statute, that*
6 *is enacted before January 1, 2013, deletes or extends that date.*

7 *SEC. 4. Section 2923.73 is added to the Civil Code, to read:*

8 *2923.73. (a) If a borrower expresses an interest in applying*
9 *for a loan modification either verbally or in writing, and the*
10 *mortgagee, beneficiary, or authorized agent does not offer the*
11 *borrower a trial or permanent loan modification according to*
12 *applicable program guidelines, the mortgagee, beneficiary, or*
13 *authorized agent shall send the borrower a denial explanation*
14 *letter by certified mail no later than 10 business days following*
15 *the denial decision.*

16 *(1) If a borrower fails to provide all required verification*
17 *documents or information by the applicable deadline as set forth*
18 *in subdivision (b), the letter shall indicate the date by which the*
19 *documents or information were to be provided, list the documents*
20 *or information that were not provided, and state that the*
21 *borrower's request for a loan modification has been denied for*
22 *this reason.*

23 *(2) If a borrower submits all required written application*
24 *materials for a loan modification by the applicable deadline as*
25 *set forth in subdivision (b), and the application is denied, the denial*
26 *explanation letter shall include all of the following in plain English*
27 *or one of the languages set forth in subdivision (b) of Section 1632,*
28 *as appropriate:*

29 *(A) The date a completed application for a loan modification*
30 *was received from the borrower.*

31 *(B) The date on which a decision was made regarding the*
32 *borrower's application.*

33 *(C) The final decision made by the mortgagee, beneficiary, or*
34 *authorized agent, which shall indicate each loan modification*
35 *program for which the borrower was considered, and the decision*
36 *made with respect to each loan modification program.*

37 *(D) If the mortgagee, beneficiary, or authorized agent was*
38 *required to consider the borrower for a loan modification under*
39 *the federal Making Home Affordable Modification Program*
40 *(HAMP), the information required to be provided in the borrower*

1 notice described in the federal Home Affordable Modification
2 Guidelines Supplemental Directive 09-08, issued November 3,
3 2009, and any amendments thereto.

4 (E) If the borrower was considered for a loan modification
5 program or programs other than HAMP, information detailing
6 the reasons the borrower did not qualify for the program, including
7 quantitative data supporting the decision if the decision is based
8 on the borrower's income, expenses, or on a net present value
9 calculation. This information may include a finding that the
10 borrower was previously offered a loan modification and failed
11 to successfully make payments under the terms of the modified
12 loan.

13 (F) The name and contact information of the holder of the note
14 for the borrower's loan.

15 (G) Instructions regarding how to dispute the decision described
16 in the denial explanation letter.

17 (b) (1) If the mortgagee, trustee, beneficiary, or authorized
18 agent is participating in HAMP or is otherwise required to review
19 the borrower's loan under HAMP guidelines, the deadlines for
20 the borrower to submit information and the mortgagee, trustee,
21 or beneficiary to review and respond to the information the
22 borrower has submitted are those set forth in the applicable HAMP
23 guidelines.

24 (2) If the mortgagee, trustee, beneficiary, or authorized agent
25 is not participating in HAMP and is not otherwise required to
26 review the borrower's loan under HAMP guidelines, the applicable
27 deadlines are as follows:

28 (A) The mortgagee, trustee, beneficiary, or authorized agent
29 shall communicate to the borrower in each contact, both oral and
30 written, the borrower's deadline for submitting an initial
31 application for a loan modification, which shall not be less than
32 45 days from the borrower's receipt of the notice required by
33 Section 2923.4.

34 (B) If a borrower submits an initial application, but does not
35 include all the forms, documents, or information the mortgagee,
36 trustee, beneficiary, or authorized agent needs in order to consider
37 the borrower for a loan modification, the mortgagee, beneficiary,
38 or authorized agent must provide the borrower with written notice
39 that clearly describes any supplemental documentation or
40 information needed to consider the borrower for a loan

1 *modification, and the deadline for providing that documentation*
2 *or information, which shall not be less than 25 days from the date*
3 *the borrower receives the notice.*

4 *(c) After sending a denial explanation letter in compliance with*
5 *subdivision (a), a mortgagee, beneficiary, or authorized agent may*
6 *proceed to record a notice of default and declaration of compliance*
7 *pursuant to Section 2923.7 even if the borrower initiates a dispute*
8 *relating to the denial explanation letter and the dispute has not*
9 *yet been resolved.*

10 *(d) This section shall not apply if any of the following occurs:*

11 *(1) The borrower has surrendered the property as evidenced*
12 *by either a letter confirming the surrender or delivery of the keys*
13 *to the property to the mortgagee, trustee, beneficiary, or authorized*
14 *agent.*

15 *(2) The borrower has contracted with an organization, person,*
16 *or entity whose primary business is advising people who have*
17 *decided to leave their homes about how to extend the foreclosure*
18 *process and avoid their contractual obligations to mortgagees or*
19 *beneficiaries.*

20 *(3) A case has been filed by the borrower under Chapter 7, 11,*
21 *12, or 13 of Title 11 of the United States Code, and the bankruptcy*
22 *court has not entered an order closing or dismissing the bankruptcy*
23 *case or granting relief from a stay of foreclosure. This shall not*
24 *preclude a mortgagee, trustee, beneficiary, or authorized agent*
25 *from soliciting or considering a borrower who is in bankruptcy*
26 *for a loan modification, whether under the requirements of HAMP,*
27 *or under its own proprietary loan modification program.*

28 *(e) This section shall apply only to mortgages or deeds of trust*
29 *recorded prior to January 1, 2009, that are secured by*
30 *owner-occupied residential real property containing no more than*
31 *four dwelling units. For purposes of this subdivision,*
32 *“owner-occupied” means that the residence is the principal*
33 *residence of the borrower as indicated to the lender in loan*
34 *documents.*

35 *(f) This section shall remain in effect only until January 1, 2013,*
36 *and as of that date is repealed, unless a later enacted statute, that*
37 *is enacted before January 1, 2013, deletes or extends that date.*

38 *SEC. 5. Section 2923.75 is added to the Civil Code, to read:*

39 *2923.75. (a) Failure to record a declaration of compliance in*
40 *accordance with Section 2923.7, recordation of a false declaration*

1 of compliance pursuant to Section 2923.7, or failure to materially
2 comply with the requirements of Section 2923.5, 2923.7, or
3 2923.73, shall constitute grounds for a borrower to pursue either
4 of the following options subsequent to a trustee sale conducted in
5 accordance with Section 2924f:

6 (1) If the property that is the subject of the declaration of
7 compliance is sold to a bona fide purchaser at a trustee sale
8 conducted in accordance with Section 2924f, the borrower may
9 recover the greater of treble damages or statutory damages in the
10 amount of ten thousand dollars (\$10,000) from the mortgagee,
11 trustee, beneficiary, or authorized agent that failed to comply with
12 Section 2923.5, 2923.7, or 2923.73.

13 (2) (A) If the property that is the subject of the declaration of
14 compliance is sold to a bona fide purchaser by the foreclosing
15 party subsequent to a trustee sale conducted in accordance with
16 Section 2924f in which title was transferred to the foreclosing
17 party, the borrower may recover the greater of treble damages or
18 statutory damages in the amount of ten thousand dollars (\$10,000)
19 from the mortgagee, trustee, beneficiary, or authorized agent that
20 failed to comply with Section 2923.5, 2923.7, or 2923.73.

21 (B) If the foreclosing party had notice of the borrower's claim
22 under this section prior to selling the property to a bona fide
23 purchaser, the borrower may recover the greater of treble damages
24 or statutory damages in the amount of twenty-five thousand dollars
25 (\$25,000) from the mortgagee, trustee, beneficiary, or authorized
26 agent that failed to comply with Section 2923.5, 2923.7, or 2923.73.

27 (3) If title to the property that is the subject of the declaration
28 of compliance is transferred to the foreclosing party at a trustee
29 sale conducted in accordance with Section 2924f, the borrower
30 may bring an action to void the foreclosure sale.

31 (b) This section shall remain in effect only until January 1, 2013,
32 and as of that date is repealed, unless a later enacted statute, that
33 is enacted before January 1, 2013, deletes or extends that date.

34 SEC. 6. The provisions of this act are not intended to be and
35 shall not be deemed to be retroactive.

36 SEC. 7. The provisions of this act are severable. If any
37 provision of this act or its application is held invalid, that invalidity
38 shall not affect other provisions or applications that can be given
39 effect without the invalid provision or application.

1
2
3
4
5

**All matter omitted in this version of the bill
appears in the bill as introduced in the
Senate, February 19, 2010. (JR11)**

O